JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968.

No. 735.

VINCENT P. BRADY,
Cross-Petitioner,

against

TRANS WORLD AIRLINES, INC.,
Respondent,

and

THE INTERNATIONAL ASSOCIATION OF MACHINISTS,
Respondent.

PETITION FOR REHEARING AFTER DENIAL OF A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

MORRIS DUANE,
1617 Land Title Building,
Philadelphia, Pennsylvania,
Counsel for Cross-Petitioner.

FRANCIS L. WHITE, JR.,
DUANE, MORRIS & HECKSCHER,
1617 Land Title Building,
Philadelphia, Pennsylvania,
Of Counsel.

International, 711 So. 50th St., Phila., Pa. 19143—Tel. SA 7-8711 Area Code 215

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QUESTION PRESENTED.

DOES AN EMPLOYEE WHO IS UNLAWFULLY DISCHARGED FROM HIS EMPLOYMENT IN VIOLATION OF THE RAILWAY LABOR ACT ALLEGEDLY BECAUSE OF HOSTILE DISCRIMINATION INTENTIONALLY PRACTICED UPON HIM BY HIS BARGAINING REPRESENTATIVE HAVE THE RIGHT TO TRIAL BY JURY TO PROVE PUNITIVE DAMAGES, DAMAGES RESULTING FROM MENTAL ANGUISH ARISING FROM THE HUMILIATION AND EMBARRASSMENT HE SUFFERED AND LEGAL EXPENSES INCURRED IN WINNING REEMPLOYMENT, WHERE FEDERAL QUESTION JURISDICTION EXISTS, GOOD FAITH ATTEMPTS TO EXHAUST INTERNAL ADMINISTRATIVE REMEDIES WERE MADE, AND WHERE FURTHER ATTEMPTS TO EXHAUST SUCH REMEDIES WOULD HAVE BEEN FUTILE?

FEDERAL JURISDICTION.

Federal question jurisdiction exists under and by virtue of the alleged and proven violation of the Railway Labor Act, 45 USCA ¶ 152 (Fourth) and ¶ 152 (Eleventh) and the alleged hostile discrimination practiced against Mr. Brady by the I. A. M., resulting in his unlawful discharge from his employment.

REASONS FOR RECONSIDERATION.

This Court, on January 20, 1969, denied Mr. Brady's Petition for a Writ of Certiorari in No. 735, and this Petition is submitted under Rule 58(2) to request a rehearing on said denial.

Mr. Brady, on February 14, 1969, obtained an extension through March 14, 1969 to Petition for Rehearing.

a) The Glover Case.

In the case of *Glover v. St. Louis-San Francisco Railroad Co., et al.*, 37 L. W. 4084 (No. 38) October Term 1968, decided January 14, 1969, this Court held that failure to exhaust administrative remedies does not bar an employee alleging discrimination from seeking redress in the Federal Courts where attempts to exhaust administrative remedies were made and denied and further attempts to exhaust would be futile.

See *Glover v. St. Louis-San Francisco Railroad Co., et al.*, 37 L. W. at page 4086, where this Court stated in regard to the factual situation involved:

> "The circumstances of the present case call into play another of the most obvious exceptions to the exhaustion requirement—the situation where the effort to proceed formally with contractual or administrative remedies would be wholly futile. In a line of cases beginning with *Steele v. Louisville & Nashville R. Co., supra,* the Court has rejected the contention that employees alleging racial discrimination should be required to submit their controversy to "a group which is in large part chosen by the [defendants] against whom their real complaint is made." 323 U. S. at 206. And the reasons which prompted the Court to hold as it did about the inadequacy of a remedy before the Adjustment Board apply with equal force to any

> remedy administered by the union, by the company, or both, to pass on claims by the very employees whose rights they have been charged with neglecting and betraying. Here the complaint alleges in the clearest possible terms that a formal effort to pursue contractual or administrative remedies would be absolutely futile. Under these circumstances, the *attempt* to exhaust contractual remedies, required under *Maddox,* is easily satisfied by plaintiff's repeated complaints to company and union officials, and no time-consuming formalities should be demanded of them. The allegations are that the bargaining representatives of the car employese have been acting in concert with the railroad employer to set up schemes and contrivances to bar Negroes from promotion wholly because of race. If that is true, insistence that plaintiffs exhaust the remedies administered by the union and the railroad would only serve to prolong the deprivation of rights to which these plaintiffs according to their allegations are justly and legally entitled."

Mr. Brady did meet the test of the *Glover* case, *supra,* on the exhaustion issue. However, prior to the decision of the Court of Appeals, the exhaustion doctrine was not raised as a bar to Mr. Brady's demand for a jury trial on his action at common law. Because of the way the case progressed in the District Court much of the evidence on the exhaustion issue was never made a part of the formal record.

b) Rulings of the Lower Courts on the Exhaustion Doctrine.

In *Brady v. TWA, et al.,* 196 F. Supp. 504, 507 (1961), the District Court held as a matter of law that Mr. Brady

was not entitled to recover punitive damages, or even common law damages, under the Railway Labor Act, and, therefore, the Court would not consider evidence in this regard as relevant to the damages claimed.

In addition, the District Court found as a matter of law that the exhaustion doctrine was inapplicable to Mr. Brady's situation. *Brady v. TWA, et al.,* 223 F. Supp. 361, 370 (1963).

The United States Court of Appeals for the Third Circuit denied Mr. Brady's request for a jury trial to prove Common Law damages against the I. A. M. on the basis that Mr. Brady had not exhausted administrative remedies nor given a reason for not doing so. *Brady v. TWA,* 401 F. 2d 87, 104 (3rd Cir. 1968).

On the other hand, the Circuit Court held that the exhaustion doctrine would not bar Mr. Brady's claim for re-employment and back wages. See *Brady, supra,* 401 F. 2d at 102 where the Court stated:

> "The District Court correctly reasoned that this section 2 (Fourth) (Eleventh) phase of the case involves the legality of Mr. Brady's discharge from his employment and not the legality of IAM's dues increase. The doctrine, relied on by IAM, applies to situations unlike the present one, which concern wholly internal union matters. The present dispute focuses on the employment relationship rather than the union relationship. Furthermore, Mr. Brady is seeking reinstatement in his employment, a remedy that is unavailable to him within the internal union procedures. These reasons justified the District Court in determining that Mr. Brady was not required to exhaust his internal union remedies before bringing suit against IAM for violation of section 2 (Fourth) (Eleventh).

In effect, the Circuit Court determined, as did the District Court, that it would have been futile for Mr. Brady to exhaust internal union remedies in his effort to gain reemployment, but refused to find that it would have been just as futile for him to exhaust internal union remedies on his claim for damages at common law which resulted from the intentional interference with his employment relationship and his discharge.

The distinction raised by the Circuit Court is without foundation in fact or law, as Mr. Brady's damages for the intentional interference with his employment relationship arose by reason of his discharge, not by reason of the dues dispute. Mr. Brady had conceded his position on the dues dispute when he paid his dues at the new rate to maintain his good standing with the union.

Further, Mr. Brady submits that he did attempt to exhaust internal administrative remedies and was denied relief, and that additional attempts would have been futile.

c) Facts Supporting Claim That Attempts Were Made to Exhaust Administrative Remedies.

The following additional facts are submitted to establish for this Court that Mr. Brady did attempt to exhaust administrative remedies and that further attempts would have been futile:

1. March 13, 1956—Mr. Brady received a certified letter from Mr. Cliff Miller, General Chairman of the I. A. M., notifying him that he was subject to discharge unless his dues were paid by March 28, 1956 (Exhibit P-3).

2. March 27, 1956—Mr. Brady sent a registered letter enclosing his dues book and a check for $10.50 to cover the dues delinquency claimed to exist by Mr. Miller (Exhibit P-65).

3. March 28, 1956—Mr. Gerald Coleman, Financial Secretary of Local 1776 of the I. A. M., acknowledged receipt of Mr. Brady's registered letter of March 27, 1956, but returned the check and dues book, asking for dues, plus a reinstatement fee, or an amount totalling $34.75 (Exhibit P-4) by April 4, 1956. Note: Mr. Coleman sent two (2) identical letters on this date, one regular mail and one registered mail.

4. March 29, 1956—Mr. Brady sent a telegram to Mr. Cliff Miller, the I. A. M. General Chairman, and to TWA Industrial Relations, asking for assistance regarding the union security provisions of the contract.

5. March 30, 1956—Mr. Cliff Miller sent a telegram to Mr. Brady requesting what assistance he needed.* Also, on that same day, a certified letter was sent from Mr. Benjamin Hayden to Mr. Brady, notifying him that he had been relieved of his standing as union Shop Steward at TWA. A copy of Mr. Hayden's letter is attached as Appendix 1b.

6. April 3, 1956—Mr. Brady filed his first Appeal with the Systems Board of Adjustment to meet the deadline set by Gerald Coleman in his letter of March 28, 1956 (Exhibit missing). Mr. Brady felt that his only recourse at this point was to the TWA-IAM Systems Board of Adjustment.

7. April 10, 1956—Mr. Brady received a registered letter from the Industrial Relations Department of TWA, informing him that the union had requested his discharge, effective April 17, 1956 (no exhibit).

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* On that same day, Mr. Miller telegrammed Mr. Benjamin Hayden, IAM recording secretary, that if Mr. Brady had not paid dues (which he had), he was no longer a shop steward nor a union member. A copy of the telegram is attached as Appendix 1a.

8. April 11, 1956—Mr. Miller sent a registered letter to Mr. Brady, correcting Gerald Coleman's demand for $34.75, and saying that Mr. Brady's union membership had been cancelled, and in order to reinstate the same, he must pay a $25.00 reinstatement fee by April 26, 1956 (Exhibit P-14).

9. April 13, 1956—Mr. Brady received a registered letter from TWA informing him that the discharge action had been terminated (Exhibit P-18).

10. April 18, 1956—Mr. Brady sent a certified letter to Mr. Miller, offering to tender dues again, but refusing to pay a reinstatement fee because he had already made a valid tender (Exhibit P-19).

11. April 19, 1956—Mr. Miller sent a letter to Mr. Brady refusing his offer to tender dues for a second time, and again demanding a reinstatement fee be paid by April 26, 1956 (Exhibit D-2).

12. April 24, 1956—Mr. Brady sent a registered letter to the Systems Board of Adjustment, submitting his second appeal to that body to meet Mr. Miller's deadline of April 26, 1956 (Exhibit D-3).

13. May 1, 1956—Mr. Brady received a letter from TWA Industrial Relations informing him that his discharge would be effective at the close of work on May 8, 1956 (no exhibit).

14. May 3, 1956—Mr. Brady telegramed Mr. J. D. Keil of TWA, Chairman of the Systems Board of Adjustment, to request the transcript of the Board Hearing, and to ask if he was entitled to the local lodge minutes (no exhibit).

15. May 4, 1956—The Systems Board of Adjustment, by special delivery letter, notified Brady that his appeal had been prematurely filed (Exhibit P-69).

16. May 5, 1956—Mr. Brady, by registered letter, submitted his third Appeal to the Systems Board of Adjustment on the basis that he had been informed that if he did not appeal, the discharge action would be considered proper and would be final and binding upon him (no exhibit).

17. May 7, 1956—O. L. Koontz of the I. A. M., Vice Chairman of the Systems Board of Adjustment, sent Brady a letter informing him that the District Lodge Minutes were not available, because he was not a member in good standing (no exhibit).

18. May 9, 1956—Mr. Brady received a letter from the Systems Board of Adjustment informing him that his Appeal would be heard May 14, 1956, in Kansas City, Missouri (no exhibit).

19. May 14, 1956—Mr. Brady received a notice from the Systems Board of Adjustment that the discharge action had been upheld (Exhibit P-73).

20. May 17, 1956—Mr. Brady sent a telegram to Cliff Miller, asking if he had any recourse under the I. A. M. Constitution regarding his discharge from employment and cancellation of union membership (no exhibit).

21. May 18, 1956—Mr. Miller sent a letter to Mr. Brady, saying that he received the telegram, but informed Mr. Brady that his discharge was final under Article XXVI of the TWA-I. A. M. bargaining agreement (no exhibit). A copy is attached as Appendix 1c. Mr. Brady was refused employment on May 17, 1956 when he reported for work.

22. June 7, 1956—Mr. Brady's lawyer at that time sent TWA and the I. A. M. letters asking for his reinstatement (Exhibit P-76).

23. June 18, 1956—TWA answered the attorney's letter, stating that the discharge action was final and binding under the bargaining agreement. A copy of that letter was sent to Mr. A. J. Hayes, the I. A. M. International President, and Mr. Cliff Miller, General Chairman (no exhibit).

24. June 22, 1956—The I. A. M. answered the attorney's letter, stating that Mr. Brady's discharge was final for his failure to abide by the terms of the bargaining agreement—and this letter came from Plato E. Papps, Chief Counsel for the I. A. M. (no exhibit). A copy is attached as Appendix 1d.

25. October 18, 1956—Mr. Brady wrote to D. Harris of TWA, pointing out the inaccuracies and misrepresentations in the testimony presented by Mr. Miller at the SBA Hearing, and asked for a rehearing (Exhibit P-68).

26. October 24, 1956—J. J. Feeney, of TWA, acknowledged receipt of Brady's letter to Mr. Harris, but replied that the SBA decision was final and binding (no exhibit).

27. February 4, 1957—Mr. Brady sent 6 registered letters, 5 of them to the SBA Board members, and one to *A. J. Hayes, International President of the I. A. M.*, again pointing out the misrepresentations and asking for a rehearing before the SBA (Exhibit P-75).

28. February 14, 1957—The Systems Board members answered Mr. Brady that their decision was final (Exhibit P-8).

29. Mr. A. J. Hayes, International President of the I. A. M, *refused to accept his copy of Mr. Brady's February 4, 1957* registered letter to him, and returned it to him unopened (no exhibit).

30. April 23, 1957—Mr. Brady filed a Complaint in the U. S. District Court for the District of Delaware.

Clearly, Mr. Brady made a good faith attempt to exhaust internal union administrative remedies before going to Court to seek relief. After some 28 contacts between the various persons in authority, both with TWA and the I. A. M., two of which letters specifically pointed out the discriminatory practices, he received no satisfaction.

Under these circumstances, further attempts to exhaust internal union administrative remedies would have been futile and the lower Courts should have so found.

The decision of the lower Court in denying Mr. Brady his request for a jury trial to prove punitive and compensatory damages resulting from the intentional interference with his employment relationship, was a clear abuse of discretion, and their decisions in that regard should be reversed, and a new trial granted on the damage issue alone. Liability has already been determined in Mr. Brady's favor.

We, therefore, respectfully request a re-hearing on the denial to grant certiorari in No. 735.

Respectfully submitted,

MORRIS DUANE,
Counsel for Cross-Petitioner.

FRANCIS L. WHITE, JR.,
DUANE, MORRIS & HECKSCHER,
Of Counsel.

30 March 1956 pub 1956

Exhibit

AH 52 2 EXTRA DL

MAR 30 1956 906A

CONFIRMATION COPY OF THIS MESSAGE
TO BE FORWARDED TO SENDER

Copy

BEN W HAYDON

103 SYLVAN AVE RUTLEDGE PENN

FINANCIAL SECRETARY .COLEMAN ADVISES ME THAT VINCENT P BRADY IS DELINQUENT IN UNION DUES IN EXCESS OF THREE MONTHS. IF THIS IS TRUE NOTIFY HIM HENDRIX AND COMPANY BY MAIL. COPY TO THIS OFFICE THAT HE IS NOT LONGER SHOP STEWARD. MINUTES OF LODGE MEETINGS ARE NOT AVAILABLE TO NON-MEMBERS

CLIFF MILLER GENERAL CHAIRMAN DISTRICT 142

Miller deposition
Page 27-50
C8

INTERNATIONAL ASSOCIATION OF MACHINISTS

1019 RIALTO BLDG.

(CFN FURNISHED)

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Appendix

A. J. HAYES *International President* ERIC PETERSON *General Secretary-Treasurer*

International Association of Machinists

GRAND LODGE HEADQUARTERS, MACHINISTS' BUILDING
NINTH STREET & MOUNT VERNON PLACE, N. W., WASHINGTON 1, D. C.

LODGE NO. 1776

OFFICE OF SECRETARY 103 Sylvan Ave. STREET Rutledge, Penna. Place March 30, 1956 Date

Brother Vincent P. Brady
507 Calhoun Road
Bellevue Hills
Wilmington, Delaware

Dear Brother Brady;

In accordance with instructions received by telegram from District # 142, this is to notify you that due to present circumstances, you are no longer eligible to be Shop Steward for T. W. A. Mechanics and will remain ineligible until further notice.

Yours truly,

Ben W. Hayden

Recording Secretary

Copy to:

V. Brady
A. Phelps
C. Miller

Appendix 16

INTERNATIONAL ASSOCIATION OF MACHINISTS

Air Transport

DISTRICT LODGE 142

1019 Fidelio Building — 326 Grand Avenue

May 18, 1936

In reply refer to file: US-SRA 10

Mr. Vincent P. Brady
507 Calhoun Road,
Bellevue Hills,
Wilmington, Delaware

Dear Mr. Brady:

In reply to your telegram of May 17, as received in this office May 18, you are referred to Article XXVI (f) of the TWA-IAM Agreement. The following is quoted from that provision.

> "Within five (5) days of receipt of such a protest, the System Board of Adjustment will meet and consider the dispute. A representative of the Company, a representative of the Union, and the employee affected will be allowed to present to the Board all evidence and argument which is pertinent to the issue. Prior to the expiration of the work day following such Board meeting, the Board will issue either a majority decision or a notice of deadlock. If a majority decision is issued, it will be final and binding upon all parties concerned. If a deadlock is reached, and if at the time of the deadlock the Board cannot agree upon a neutral to sit with the Board to decide the dispute, the Board will immediately request the National Mediation Board to appoint a neutral, and the Board will meet with him at the earliest opportunity and decide the dispute. At the meeting of the Board, sitting with a neutral, a representative of the Company, a representative of the Union, and the employee affected will be allowed to present to the Board all evidence and argument which is pertinent to the issue. A majority decision of the Board, including the neutral, will be issued within five (5) days after such meeting and will be final and binding upon all the parties concerned."

Very truly yours,

Cliff Miller
General Chairman
District 142

CM:pa

cc: Lodge 1776
E. T. Cheslock
G. C. [illegible]man
Frank Heisler

"HE IS FREE FROM DANGER WHO, EVEN WHEN HE IS SAFE, IS ON HIS GUARD."

EXHIBIT A

Appendix 1c

C - O - P - Y

INTERNATIONAL ASSOCIATION OF MACHINISTS

1300 Connecticut Ave. Washington 6, D.C.

June 22, 1956

Short and Connolly
Philadelphia National Bank Bldg.
N.E.Corner Broad & Chestnut Sts.
Philadelphia 7, Pennsylvania

Attention: Hugh P. Connolly, Esq.

Dear Mr. Connolly:

In answer to your letter of June 7, 1956 regarding the recent discharge of Mr. Vincent P. Brady from Trans World Airlines, Inc. because of his failure to abide by the terms of the union security provision in that agreement, we must respectfully decline your request to restore Mr. Brady to membership in goodstanding in view of the fact that at the time of the request for his discharge, he was not, in fact, a member in goodstanding of the Union.

Sincerely yours,

/S/ PLATO E. PAPPS

Plato E. Papps
Chief Counsel

cc: Trans World Airlines, Inc.
Walker
Coonley
Cliff Miller
Heisler